

REMARKS

Reconsideration of the above referenced application in view of the enclosed amendments and remarks is requested. Claims 1-20 remain pending without amendment. Claims 1, 6, 11, and 16 are the independent claims.

ARGUMENT - 35 U.S.C. § 103(a)

The Office Action rejects claims 1-2, 5-8, 10-12, 15-17, and 20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent application serial no. 09/737,486, publication no. US 2001/0027396 A1, by Tatsuhiko Sato (hereinafter "Sato"), in view of U.S Patent No. 5,675,708 to Fitzpatrick et al. (hereinafter "Fitzpatrick"). The Office Action further rejects claims 3-4, 9, 13-14 and 18-19 under 35 U.S.C. § 103(a) as being unpatentable over Sato in view of Fitzpatrick and in further view of U.S. patent no. 5,834,670 to Takeshi Yumura et al. (hereinafter "Yumura"). Applicant respectfully traverses those rejections, at least because 1) the Office Action has failed to make a prima facie showing of obviousness as to each and every limitation of the rejected claims and 2) the Office Action has failed to make a proper showing of a motivation to combine the cited references.

Applicant hereby re-asserts all arguments set forth in the response filed 11 November, 2004. Regarding the statements made in the Final Office Action, Applicants would further state the following.

Claims 1 and 11. Regarding Claims 1 and 11 the Office Action admits that Sato does not specify "that the concatenating of the at least a portion of the audio format of the descriptive information is executed to an audio file." (Office Action, p. 4). Applicant agrees. In addition, Applicant points out that Claim 1 specifically recites "concatenating at least a portion of an audio format of the descriptive information to the audio file." (Claims 1 and 11, in part; emphasis added). Thus, the audio format of the descriptive information is concatenated to the audio file. This element is not met either individually nor in combination by Sato or Fitzpatrick.

The “synchronism” of Sato is admitted by the Office Action to fail to read on the quoted element above, as it involves only “audible synthesis”. (Final Office Action, pp. 8 – 9). Sato thus does not disclose, teach or suggest “concatenating at least a portion of an audio format of the descriptive information to the audio file.” (Claim 1, in part; emphasis added). Fitzpatrick also fails to disclose, suggest or teach such element. Applicant notes that the element of Claims 1 and 11 have been mis-quoted on page 9 of the Office Action. The Office Action states that “Sato does not clearly specify: that the concatenating of the at least a portion of the audio format of the descriptive information is executed to *an* audio file.” Again, Applicant notes that the actual claim limitation recites concatenation to “the audio file.”

The Final Office Action admits that “the system of Fitzpatrick handles entities from an input file, and combines them into a single output file.” (Final Office Action p. 3, citing Fitzpatrick Col. 3, ll. 41 – 53 and Col. 4, ll. 58 – 65). Thus, neither Sato nor Fitzpatrick, either alone or in combination, suggests concatenation to an original file that is an audio file.

The Final Office Action attempts to assert that, because the input file of Fitzpatrick (which is not an audio file) may include audio elements, it satisfies the burden of making a *prima facie* case of obviousness with respect to concatenating “to the audio file.” The Final Office Action states that, because one can go from beginning to end of the flowchart shown in Fig. 2 of Fitzpatrick without traversing blocks 320 – 380, Fitzpatrick discloses processing for an audio-only file. However, such is not the case. One cannot traverse from beginning to end of the flowchart in Fig. 2 without executing block 225. If audio is encountered, block 270 must also be executed. Accordingly, the flowchart of Fig. 2 contemplates non-audio components of the input file; Fitzpatrick simply does not suggest, disclose or teach concatenating information to “the audio file” from which the metadata has been read. Claims 1 and 11 are allowable for at least these reasons. Dependent claims 2 – 10 and 12 – 15 are also allowable for at least these reasons.

Claim 6. The Final Office Action has failed to make a prima facie of obviousness regarding Claim 6 at least because neither Sato nor Fitzpatrick, either alone or in combination, disclose “mixing an audio format of at least a portion of the descriptive information with the audio file” and “generating a new audio file containing audio data resulting from the mixing.” Generating an “intermediate audio output file”, which is how the Final Office Action characterizes Kirkpatrick, does not satisfy the burden of showing a prima facie case of obviousness with respect to mixing “with the audio file” nor “generating a new audio file containing audio data resulting from the mixing.” Sato also fails to suggest or disclose “generating a new audio file.” Thus, neither reference, either alone or in combination, shows the recited elements. A prima facie showing of obviousness regarding Claim 6 has not been made out – Claim 6 is therefore allowable for at least this reason. Also, all claims that depend from Claim 6 are also allowable for at least this reason.

Claim 16. Claim 16 is allowable at least because the Office Action has failed to address each and every element of Claim 16 in its rejection. A prima facie showing of obviousness thus has not been properly made.

In addition, the Office Action has failed to make a prima facie showing of obviousness at least with respect to the following element of Claim 16: “concatenating at least a portion of an audio format of the descriptive information to the audio file.” See discussion of Claim 1, above. Claim 16 is allowable for at least these reasons. In addition, all claims that depend from Claim 16 are also allowable for at least these reasons.

Claims 3-4, 9, 13-14, and 18-19. As is set forth above, neither Sato nor Fitzpatrick, either alone or in combination teach the recited elements of independent Claims 1, 6, 11, nor 16. Furthermore, the Office Action has failed to provide a proper showing of motivation to combine the Sato and Fitzpatrick references. Therefore, Claims 3-4, 9, 13-14, and 18-19, each of which depends from one of the independent claims discussed above, are all allowable.

For these and other reasons, claims 1, 6, 11, and 16 are allowable. Since the independent claims are allowable, dependent claims 2-5, 7-10, 12-15, and 17-20 are also allowable.

CONCLUSION

In view of the foregoing reasons and other reasons readily apparent, Claims 1-20 are all in condition for allowance. If the Examiner has any questions, the Examiner is invited to contact the undersigned at (512) 314-0349. Early issuance of Notice of Allowance is respectfully requested.

Respectfully submitted,

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